

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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OSCAR LEONEL GARCIA,

Plaintiff,

-V-

THOMAS DECKER, in his official capacity as Field Officer Director, New York City Field Office, U.S. Immigration and Customs Enforcement, et al.,

Defendant.

20-cv-1345 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

A status conference in this case is scheduled for tomorrow, March 13, 2020.

Petitioner notes that “[n]o statutory exhaustion requirement applies to Petitioner’s claim of unlawful detention” and that “[t]o the extent that prudential concerns lead the Court to require exhaustion as a discretionary matter,” certain exceptions to the prudential exhaustion doctrine apply. Dkt No. 1 at 5. The Government argues that the Court should apply an exhaustion requirement and that the exceptions to the requirement do not apply. Dkt No. 11 at 9.

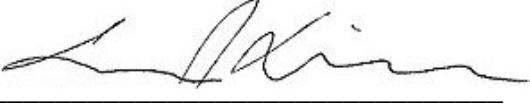
The Court has not identified any Supreme Court or Second Circuit authority holding that exhaustion is required under 28 U.S.C. § 2241 when the order being challenged is not a final order of deportation (particularly when, as here, there is no alternative forum in which to raise the constitutional claim). The single authority cited by the parties, *Beharry v. Ashcroft*, 329 F.3d 51 (2d Cir. 2003), merely assumes that the doctrine applies to Section 2241 without deciding the issue and other cases concerning statutes that by their terms are limited to final orders of deportation. Other federal statutes, including in the immigration context, require exhaustion, but

Section 2241 does not.

The parties are invited to submit any Second Circuit or Supreme Court case authority holding that exhaustion applies to constitutional challenges to immigration detention under Section 2241. (The Court is aware of the case authority regarding review of final orders of deportation.)

SO ORDERED.

Dated: March 12, 2020
New York, New York



LEWIS J. LIMAN
United States District Judge